IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

RCRev..No. 215 of 2005()

RCA.2/1997 of DISTRICT COURT (ADHOC) I, PATHANAMTHITTA
RCP.2/1994 of MUNSIFF'S COURT, THIRUVALLA
.....

REVISION PETITIONERS/RSPDTS.IN RCA/CR.PTNRS 1 TO 3
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1. SARAMMA MAMMEN,
THEKKECHIRAYIL, AJI BHAVAN, THALAVADY THEKKEMURI,
THALAVADY VILLAGE, THIRUVALLA TALUK.

2. BABU MAMMEN,
THEKKECHIRAYIL, AJI BHAVAN, THALAVADY THEKKEMURI,
THALAVADY VILLAGE, THIRUVALLA TALUK.

3. ANNAMMA SUNNY,
THEKKECHIRAYIL, AJI BHAVAN, THALAVADY THEKKEMURI,
THALAVADY VILLAGE, THIRUVALLA TALUK.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS: APPELLANTS IN RCA/PETITIONERS IN RCP:
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1. MATHEW POTHEN,
THEKKELAPPALATHILAYA, MULLAPPALLIL VEEDU,
PADINJATTUMCHERRY MURI, KAVIYOOR VILLAGE.

2. MARIYAMMA POTHEN,
THEKKELAPPALATHILAYA, MULLAPPALLIL VEEDU,
PADINJATTUMCHERRY MURI, KAVIYOOR VILLAGE.

BY ADV. SRI.P.R.VENKETESH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. NO.1674/05 IN RCR NO.215/2005

DISMISSED.

21.8.2007.

SD/- K.BALAKRISHNAN NAIR, JUDGE.
SD/- HARUN-UL-RASHID, JUDGE.

/TRUE COPY/

K.BALAKRISHNAN NAIR &

HARUN-UL-RASHID, JJ.

R.C.R. NO. 215 OF 2005

Dated 21st August, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioners are the tenants. The respondents are the landlords. The landlords filed the Rent Control Petition claiming eviction under Sections 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller dismissed the application on all grounds. The landlords appealed. The Appellate Authority allowed eviction on all grounds except under Section 11(4)(ii). Hence this revision by the tenants.

2. The brief facts of the case are the following: The tenanted premises consist of a building and 38.25 cents of land. The 2nd respondent herein got the said property under Ext.A1 sale deed dated 4.2.1963. Later, by Ext.A3 gift deed dated 1.1.1980, she assigned 10 cents of land with the building thereon, out of the tenanted premises, to the 1st respondent herein,

who is her son. The rent deed was executed by one Mr. T.V.Mammen on 17.11.1969 as per Ext.A5 in favour of the power of attorney holder of the 2nd respondent herein. The power of attorney holder was her husband. The said Mammen is the husband of the 1st revision petitioner and father of the 2nd revision petitioner and father-in-law of the 3rd revision petitioner. The said Mammen died in 1991 and thereafter, revision petitioners 1 and 2 were in occupation of the tenanted premises. The husband of the 3rd revision petitioner was abroad and his address was not known. The 3rd revision petitioner was impleaded to represent him. The landlords have also a case that the tenants inducted three persons, who are arrayed as respondents 4 to 6 in the R.C.P., as sub-tenants. The tenants resisted the petition, raising various contentions. They denied sub-tenancy. They have also denied the claim of bona fide need of the landlords. The allegations of non-user of the premises, causing damage to the building and thereby reducing its value and utility, were also denied by them. They also went to the extent of denial of the title of the landlords over the tenanted premises. From the side of the landlords Pws.1 and 2 were examined and Exts.A1 to A30 were marked. From the side of the tenants CPWs.1 to 3 were examined and Exts.B1 to B24 were marked. As court exhibits, C1 and C1(a) were also marked. The Rent Controller dismissed the application on all grounds. In the appeal, the

Appellate Authority framed the following points for its consideration:

> "1. Whether Mr.Pothen Mathai had sufficient authority to file the R.C.P.?
>
> 2. Whether the R.C.P was bad for non-joinder of the necessary parties?
>
> 3. Whether the need set forth in the petition for occupation of the premises by and on behalf of the landlords was one made with the requisite bona fides?
>
> 4. Whether the appellants are entitled to an order of eviction on the arrears of rent?
>
> 5. Whether the appellants are entitled to an order of eviction on the ground of sub-lease, on the ground of the tenant ceasing to occupy the premises for the statutory period prior to the filing of the petition and on the ground of reducing the value and utility of the building materially by the tenants?"

The Appellate Authority found all the points in favour of the landlords except the last limb of point No.5, namely, reducing the value and utility of the building materially.

3. The learned counsel appearing for the revision petitioners urged five points before us. The first point is concerning the legal effect of non-impleadment of one of the sons of the original tenant. According to the tenants the non-impleadment is fatal to the petition. In support of that submission, the learned counsel relied on the decision of the Apex Court in **Daya Ram v. Shyam Sundari** (AIR 1965 SC 1049). But, it is common

case that after the death of the original tenant, his legal heirs formed a single tenancy. If that be so, if some of them are on the party array, the R.C.P is maintainable, in view of the decision of this Court in **Mary v. Kunjanam** [2002(3) KLT 95], in which the decision of the Apex Court in **Ashok Chintaman Juker v. Kishore Pandurang Mantri** [(2001)5 SCC 1] is relied on. Since the said point is covered squarely against the tenants by the above said decisions, it is unnecessary to go into the various contentions urged by the learned counsel in support of his submission. We also notice that in the decision cited by the learned counsel for the revision petitioners, the point relied on by the revision petitioners is only an obiter dicta.

4. The second point urged by the learned counsel for the revision petitioners is regarding the defect of the power of attorney Ext.A4, executed by the 1st respondent herein in favour of his father. It is a general power of attorney. The relevant portion of the same reads as follows:

> "KNOW ALL MEN BY THESE PRESENTS: That I, MATHEWS POTHEN, do hereby make, constitute and appoint my father, T.M.Pothen, my true and lawful attorney, for me and in my name, place and stead, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the premises as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or the substitute of my attorney may

> lawfully do or cause to be done by virtue hereof. A photocopy hereof shall be deemed an original for all purposes whatsoever."

Relying on the above recitals in the power of attorney, the Appellate Authority held that it definitely authorises the power of attorney holder to file the R.C.P also. We are of the view that the said finding of the Appellate Authority is a reasonable finding and a fair construction of the recitals in the power of attorney. So, we cannot interfere with the same.

5. The third point urged by the learned counsel for the revision petitioners is that in this case, the landlord kept himself away from the witness box. He was the best witness to speak about the bona fide need. If he was present, the tenants could have cross-examined him on various aspects and brought out the fallacy of his claim. In support of that submission, reliance was placed on the decision in **Ratheesh Kumar v. Jithendra Kumar** [2005(2) KLT 669]. But, we find that the observations made in that case, having regard to the special facts of the case, cannot be pressed into service, as a principle of universal application. The necessity of the landlord to enter the witness box will depend upon the facts of each case. In this case, the power of attorney holder was, for all practical purposes, the de facto landlord. Apparently, he purchased the property in

his wife's name and on his instruction, the wife assigned a portion of the same to their son. He was managing the property all these years. In the R.C.P the need urged is the necessity of the power of attorney holder and his wife, the 2nd respondent herein to reside together in Thiruvalla in their own house during their last days. The learned counsel for the revision petitioners submitted that the parents are affluent and therefore, they cannot be described as persons dependant on the 1st respondent herein, who is the real landlord of the building. But, dependancy cannot be measured based on the financial capacity of the parties. Aged parents, even if they are wealthy, can be treated as dependant on their son. Further, another need urged is for the residence of the 1st respondent's children. Those minor children are definitely dependant on their father, the 1st respondent herein. Therefore, the claim of bona fide need was apparent from the facts of the case. The deposition of the power of attorney holder was more than sufficient to prove the case of bona fide need. So, the third contention also cannot be accepted.

6. The fourth point urged by the learned counsel for the revision petitioners is that eviction can be ordered only in respect of the building and the 10 cents of land. The eviction ordered in relation to the entire petition schedule items is unsustainable, it is contended. But, we find that

the original tenancy was for the entire property with the building thereon. After 11 years of the commencement of the tenancy, a portion of the tenanted premises was assigned to the 1st respondent herein, who is the son of the original landlord, the 2nd respondent herein. We feel that they can jointly maintain the application for eviction of the entire tenanted premises. This hyper-technical contention is devoid of any merit. Further, we find that, that was not a point pleaded before the Rent Controller or urged before the Appellate Authority.

7. The last point is concerning the bona fide need of the landlords. We have mentioned incidentally on this point also, while considering the third point urged by the revision petitioners. The need urged is for the residence of the children of the 1st respondent herein and also for his father, apart from his mother, who is the landlord of a portion of the tenanted premises. The desire of the parents to settle in their native place in their home town along with their grand children is definitely a bona fide need. The tenants do not have a case that the landlords have other buildings in the town or in the locality and therefore, the claim for eviction is hit by the first proviso to Section 11(3) of the Act. Therefore, the 5th point urged is also not

tenable.

In the result, the R.C.R fails and it is dismissed with costs.

K.BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.

Nm/